

**SUMMIT CREEK DISTRIBUTION
ORDER OF THE STATE ENGINEER**
For Water Discharged into or Diverted from Summit Creek

DISCUSSION

Cause for Distribution

The Summit Creek Distribution System was created in 1983 by the State Engineer for the purpose of obtaining records of diversion and regulating distribution of Summit Creek in Smithfield. The several commissioners have dealt with the water users to create a record of diversion and regulation for over 26 years. Distribution has followed Memorandum Decisions of the State Engineer made in 1980 on exchanges and a 2003 Draft Distribution Order.

In distributing Summit Creek, the State Engineer has recognized Smithfield Irrigation Company as the owner of the primary right on the system. All high water users are regulated to no-flow when the flow of Summit Creek drops below 33.5 cfs. The distribution emphasis has centered on meeting the primary right and exchanges made with Hyde Park City, Smithfield City and Smithfield North Bench Ditch Company. The exchanges are based on shares in the Logan & Northern Canal and the Logan Hyde Park and Smithfield Canal.

Water entering Summit Creek from the Logan Hyde Park Smithfield Canal (Upper Canal) measured at the Smithfield Golf Course parshall flume known as the "Black Pipe" gage, may be claimed by several parties for irrigation and municipal exchange purposes. The basis of claim to the water may be ownership of shares, approved change or exchange applications and agreements. The Logan Hyde Park Smithfield Canal also owns and operates the "Budge" well which is piped into the Smithfield Irrigation Company system to satisfy exchanges.

The Logan & Northern Canal is operated to provide water for its shareholders for irrigation and exchange purposes. The basis of claim to the water may be ownership of shares, approved change or exchange applications and agreements. Shareholders include, among others, Smithfield North Bench Ditch Company and Smithfield Irrigation Company. The system also includes the "Brickyard" well.

Logan, Hyde Park & Smithfield Irrigation Company and Logan & Northern Irrigation Company are responsible for delivering water to their shareholders, including water delivered for exchanges. The two irrigation companies entered into an agreement to combine the canals under the Cache Highline Water Association, using the Upper Canal, and then discharge into the Logan & Northern Canal at several points along the canal. They also discharge water into Summit Creek through the "Black Pipe" for re-diversion in the East Armory diversion, which is a point of diversion for Smithfield Irrigation Company and Logan & Northern Irrigation Company under approved changes.

Much has changed since approval of the municipal exchanges and the inception of the distribution system and more changes will likely occur. The formula given to determine the flow to be delivered at the Black Pipe to meet exchanges is not representative of the present operation of the system and over reaches the authority of the State Engineer. Hyde Park piped the Birch Creek springs such that the overflow is returned to Birch Creek down the canyon rather than to the Upper Canal. These and other changes necessitate that a new method of distribution of Summit Creek be employed.

INSTRUCTIONS

Distribution and Regulation of Water

Distribution of Summit Creek must be based on water delivered to meet priorities and exchanges. Rather than attempting to deliver shares from sources outside of Summit Creek, which is the responsibility of the respective irrigation companies, the focus of the River Commissioner needs to be centered on interactions with Summit Creek and how they affect distribution. Of necessity, the irrigation companies must declare ownership of water released to satisfy exchanges.

Priority Regulation

The table of water rights involved in the distribution of Summit Creek is listed at the end of this discussion. Of note, the primary water right, with a priority of 1860 is Smithfield Irrigation Company for 33.5 cfs. Distribution is required when the flow of Summit Creek above the Smithfield Irrigation diversions, is less than 33.5 cfs. To allow for the maximum beneficial use of the water, Smithfield Irrigation Company must call for regulation under its right to begin regulation.

For distribution, the flow of Summit Creek is the combined measurements of: Summit Creek, below the confluence of Birch Creek, the diversions at Stillwater Farms and the high water ditches and water diverted by Smithfield City and Hyde Park City. As the flow of Summit Creek drops to less than 33.5 cfs, water rights on Summit Creek or its tributaries with no exchange rights and junior priorities may be regulated to low or no flow.

Diversion Information Needed

To make a determination of the disposition of the water in Summit Creek and ensure that exchanges and priority rights are being met, measuring devices are required and measurements of the following diversions are necessary.

1. Flow being diverted by Smithfield North Bench Ditch Company at the Stillwater Farms gage.
2. Flow being diverted by Smithfield City from its several springs along Summit Creek.
3. Flow being diverted by Hyde Park City from its springs in Birch Creek.
4. Flow of Summit Creek measured below the confluence of Birch Creek, above the Black Pipe.
5. Flow entering Summit Creek at the end of the Upper Canal measured through the Black Pipe gage and a declaration by the Cache Highline Association of the ownership of water at that location.
6. The flow from the Logan Hyde Park & Smithfield Canal's Budge well.
7. The flow diverted from the Logan & Northern Canal for the "South Smithfield" part of Smithfield Irrigation Company that is an exchange point for North Bench Ditch.
8. The flow from the Logan & Northern's "Brickyard" headgate and a declaration by the company of the ownership of water in the headgate.
9. Flow diverted from Summit Creek at the East Armory diversion and a declaration by the companies of the ownership of water at that location.
10. Flow released by Logan & Northern into Summit Creek at the Armory.
11. Flow diverted from Summit Creek by Smithfield Irrigation Company at their diversions (Mill Race, 3 Creeks, Lions Lodge, Clay Pool and Big Ditch).
12. The flow diverted from the Brickyard well and the wells included under January 2000 order.

13. Flow in high water ditches (Nilson, Pilkington, Chambers, etc.).

Exchanges

Smithfield City and Hyde Park exchange water is delivered to Summit Creek from the Logan Hyde Park & Smithfield Canal through the Black Pipe and from the Budge well. Once regulation begins the amount of water that Smithfield City is taking from its springs along Summit Creek is deemed to be Smithfield Irrigation Company water per exchange decision on E1401. The amount of water that Hyde Park is taking from its springs in Birch Creek is reduced by 0.5 cfs by reason of a stipulation under water right 25-3065 and once regulation begins the rest is deemed to be Smithfield Irrigation Company water per exchange decision on E1428. The overflow of the Hyde Park system into Birch Creek is deducted from the flow taken if it is measured.

When the flow of Summit Creek is less than 33.5 cfs, the amount of water that Smithfield North Bench Ditch Company is taking through the Stillwater Farms diversion is deemed to be Smithfield Irrigation Company water per exchange decision E1584. The water diverted is exchanged for the total of: the water discharged into Summit Creek to Smithfield Irrigation Company by Logan & Northern Irrigation Company for Smithfield North Bench Ditch Company through the Black Pipe and at the Armory, and the canal water diverted by Smithfield Irrigation Company from the South Smithfield headgate and the Brickyard headgate under Smithfield North Bench shares in Logan and Northern Irrigation Company.

The commissioner will monitor and regulate at least weekly the diversions of Hyde Park City and Smithfield City so that the volume diverted to the municipal use equals as nearly as can be regulated the volume discharged into Summit Creek from Logan, Hyde Park, Smithfield Canal. Hyde Park has captured and piped springs in Birch Creek and discharges the overflow to Birch Creek down the canyon, preventing loss of extra water from the surface hydrologic system. Piping Birch Creek past a losing section of the creek has been a benefit to keep the lower section wet.

Water Right 25-4876 in the name of Smithfield North Bench Ditch Company is for a flow of 18 cfs and is junior in priority to Smithfield Irrigation Company. The companies have an exchange agreement under which Smithfield North Bench Ditch Company is limited to divert only the amount of water they release to Smithfield Irrigation Company. Smithfield North Bench Ditch Company also has an approved exchange to effectuate the exchange of water and bring it under the authority and jurisdiction of the State Engineer. The point of release of the water may be from the Black Pipe into Summit Creek, the Armory spill into Summit Creek, the South Smithfield head gate and the Brickyard head gate. Smithfield Irrigation Company should communicate to the river commissioner where they would like the water released. The commissioner will monitor as necessary the exchange water delivered to Smithfield Irrigation Company at these points as well as the water diverted by Smithfield North Bench Ditch Company to determine if an equitable exchange is being made.

If at any time the commissioner believes that flows provided by exchange water are not sufficient to provide an equitable exchange to the recipient, Smithfield Irrigation Company, he will inform the owners of the exchanges and the canals. The commissioner does not have authority to regulate diversions in the canals providing exchange water, but does have responsibility to ensure that exchanges are being met. If an exchange is not effective because adequate exchange water is not

available to provide an equitable exchange, the diversions on Summit Creek should be regulated to deliver water to the water users according to the priority dates of their water rights.

The State Engineer's records of water rights and exchanges include copies of agreements and stipulations between the parties involved. While it is not within the authority or jurisdiction of the State Engineer to enforce agreements or to require water users to enter into or maintain agreements, it is within the authority and jurisdiction of the State Engineer to ensure that approved changes and exchanges are exercised within the law such that prior rights are protected.

Water Rights

The water rights involved in his order include the following:

<u>Water Right #</u>	<u>Current Owner</u>	<u>Flow (cfs)</u>	<u>Priority</u>	<u>Source</u>
25-6109	Smithfield Irrigation Co. Under this right, Smithfield Irrigation Company is limited to the sole supply irrigation of 2000.82 acres from Summit Creek.	33.5	May 1, 1860	Summit Creek
25-4876	Smithfield North Bench Ditch Co. Under its right, Smithfield North Bench Ditch is limited to the sole supply irrigation of 862.0 acres from Summit Creek.	18.0	May 1, 1874	Summit Creek
25-6378,6379,6380	Pilkington Ditch	0.75	May 1, 1875	Birch Creek
25-6455,6456,6457,4966	Nilson Ditch	1.5	May 1, 1877	Summit Creek
25-6462	Keith Nilson	1.5	May 1, 1877	Summit Creek
25-6461	Porcupine Land LC.	1.485	May 1, 1877	Summit Creek
25-6423,6424,6425,6426	Chambers Ditch	3.0	May 1, 1884	Birch Creek
25-6464,6465,6466	Miles, Cronquist, DuPont	1.0	May 1, 1888	Summit Creek
25-6623	Smithfield City	0.125	Jun 29, 1892	Peterson Springs
25-3065	Hyde Park City* *This water right was approved because of a stipulation between Smithfield Irrigation Company and Hyde Park City and is not subject to distribution.	0.5	Aug 9, 1934	Birch Creek
25-3422	Logan & Northern Irr. Co.	8.0	Aug 21, 1961	Brickyard well
25-4142	Logan, Hyde Park & Smithfield Canal Co.	4.9	Feb 19, 1963	Budge well
25-9349 (Ex1401)	Smithfield City*	5.0	Dec 28, 1978	City Springs

*This claim to water is based on an exchange of 314 shares of Logan, Hyde Park & Smithfield Canal Co. for waters tributary to Summit Creek including the Budge well.

25-9351 (EX1428) Hyde Park City* 1.0 Feb 14, 1979 Birch Creek Springs

*This claim to water is based on an exchange of 1 cfs equaling 55 shares in Logan Northfield carried by the Upper Canal for additional Birch Creek water.

25-11070 (EX5184) Smithfield North Bench Ditch* 14.0 Oct 26, 2010 Summit Creek

*This claim to water is based on an exchange of 333 shares of Logan & Northern for water after their high water right is out of priority.

25-6110 Logan & Northern Irrigation. Co. May 1, 1860 Summit Creek re-diversion under change applications t36289 and a36298.

* Smithfield North Bench Ditch Co. owns 333.5 shares in Logan & Northern Irrigation Co., which is 10.16% of the shares and Smithfield Irrigation Co. currently owns or rents 181 shares, which is 5.5 % of the shares.

25-3055 Logan, Hyde Park & Smithfield Canal Co. May 1, 1860 Summit Creek re-diversion under change application a36782.

* Smithfield Irrigation Co. owns 46 shares in the Upper Canal, which is 2.13% of the shares.

ORDER OF THE STATE ENGINEER

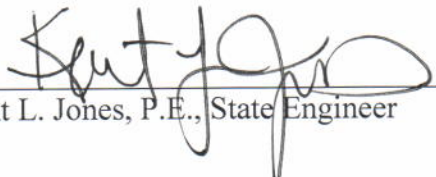
It is, therefore, **ORDERED**, that Summit Creek shall be distributed by the Summit Creek River Commissioner according to the preceding Instructions, the priority schedule shown above, and the following conditions:

1. Exchanges will be based on water delivered to the Summit Creek system. Diversions out of Summit Creek and exchanges delivered to Summit Creek are required to be measured and reported to the Summit Creek River Commissioner.
2. This Order rescinds the formula used in determining flow to be injected into Summit Creek given in Memorandum Decisions on Exchange number 1401 filed by Smithfield City dated February 15, 1980 and Exchange number 1428 filed by Hyde Park City dated January 14, 1980. The flow exchanged into Summit Creek to meet these exchanges shall be determined by the River Commissioner.
3. This Order rescinds condition 4 of the Memorandum Decision on Exchange number 1428 filed by Hyde Park City dated January 14, 1980, regarding the overflow from Hyde Park's reservoir. Hyde Park may return its overflow into Birch Creek and be credited for a deduction if it is measured.
4. A prior appropriator must make a priority call for regulation for the River Commissioner to begin regulation.

5. Smithfield Irrigation Company should communicate to the river commissioner where they would like the water released to meet Exchange number 1584 filed by Smithfield North Bench Ditch Company.

This Order is subject to the provisions of Administrative Rule R655-6-17 of the Division of Water Rights and to Sections 63G-4-302, 63G-4-402, and 73-3-14 of the Utah Code which provide for filing either a Request for Reconsideration with the State Engineer or an appeal with the appropriate District Court. A Request for Reconsideration must be filed with the State Engineer within 20 days of the date of this Order. However, a Request for Reconsideration is not a prerequisite to filing a court appeal. A court appeal must be filed within 30 days after the date of this Order, or if a Request for Reconsideration has been filed, within 30 days after the date the Request for Reconsideration is denied. A Request for Reconsideration is considered denied when no action is taken 20 days after the Request is filed.

Dated this 14 day of June, 2011.


Kent L. Jones, P.E., State Engineer

CERTIFICATE OF SERVICE

I, the undersigned, certify that on this 14 day of June 2011, I mailed by regular U.S. Mail a copy of this Order to the following:

Darin Evans, Water Commissioner
236 South 200 West
Hyde Park, UT 84318

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Logan, Hyde Park & Smithfield Canal Co.
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BY: 